MCCALLION FOR CONGRESS
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October 27, 2000

VIA FEDERAL EXPRESS

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street
Washington, D.C. 10463

Re: McCallion for Congress ID No. C00358424
MUR 5100

Dear Mr. Young:

This letter serves as the response of the above-captioned committee's response to complaint of the Republican National Committee (NRC) designated MUR 5100 by the FEC.

In their first allegation, the NRC states that we violated federal law by failing to file a Pre-Primary Financial Disclosure Statement. As set forth in my letter of Michael A. Young, dated September 9, 2000 (a copy of which is attached hereto) this committee was not engaged in a primary campaign and did not engage in fundraising for a primary election. Mr. McCallion did not appear on the ballot in the Democratic Primary held in New York on September 12, 2000. The July 2000 Quarterly report filed by the committee was correctly described on its cover sheet designated as a "General Election" Report. We conceded immediately, when notified by the FEC, that certain individual contribution entries had been erroneously "checked" as primary contributions by young people assisting me doing the data entry. In short, this committee acted in complete good faith in not filing a Pre-Primary Report, and based on statements made in the public media attributed to an FEC spokesperson, we understood that your agency agreed with this understanding. Indeed, a copy of the news article quoting the FEC spokesperson – as agreeing with the committee's position that no pre-primary filing is required if there is no primary -- attached to one of the NRC's submissions to the FEC. We, therefore, believe that there is no good faith basis for the NRC to continue to press this complaint.

The NRC's citation to the Commission's prior advisory opinions are simply irrelevant because of the differences in facts in this case. In AO 1986-21 the Commission advised that where a candidate for congress was unopposed, but was to be nominated by a state party convention in Utah, the convention itself constituted an "election" within the meaning 2 U.S.C. 431 (1)(B). Finding that Utah law grants the party convention the "authority to nominate a candidate for election" the convention itself was deemed the equivalent of a primary election, and a candidate nominated there was required to file pre-primary disclosure reports.

In this case, Mr. McCallion was "designated" to be the party candidate by party officials and county committees, not through any state convention. Furthermore, Mr. McCallion did not raise funds for the purpose of promoting his designation to this candidacy. Therefore, nothing in AO1986-21 is controlling in this situation.

In AO 1978-41, the commission advised that where the candidate had received the endorsement of both the Republican and Conservative parties, and was unopposed in either party's primary, he could raise an additional $1,000 for the primary in which the candidate was unopposed. That is not the situation here, because Mr. McCallion has not raised any funds, nor does he seek to raise funds for the primary election he did not have.

In AO 1978-65 the Commission advised that where a candidate had raised funds anticipating a general election which then did not occur under Georgia law because the candidate was unopposed, the candidate was required to file pre and post general election reports as if the election was conducted. This Advisory Opinion also advised that the committee "may receive $1000.00 with respect to the primary and $1,000.0 with respect to the general election, from the same contributions for a primary in which he is unopposed and which does not occur, and if he does avail himself of this extra fundraising potential, he must file the corresponding pre and post primary reports." Here, Mr. McCallion has chosen not to raise the additional funds allowed for the primary, and he has no corresponding reporting requirement.

In its second allegation, the RNC speculates that since Mr. McCallion is a "well known attorney" who was involved in the Exxon Valdez litigation, he must have "sizeable personal wealth" not disclosed in his personal Financial Disclosure Report. This committee's answer is simple and straightforward: the allegation is not true. While Mr. McCallion has had a distinguished legal career, it has not brought him any personal wealth. The appeal in the Exxon Valdez litigation is still pending in the courts. In any event, any legal fees received in that case would go to his law firm, not him personally. The financial disclosure Form B statement for the U.S. House of Representatives ("FDS") accurately describes Mr. McCallion's financial condition at the time it was completed.

The PFD directs that a candidate exclude from his assets disclosure any personal residence or bank accounts. Mr. McCallion's personal assets consist of the equity in his home in Ancram, New York (excluded from his FDS) and an Individual Retirement Account at Citibank which was disclosed on the FDS. That's it. He has neither a savings nor checking account in which he maintains a balance of more than $5000.

Mr. McCallion does, however, have substantial current income from his partnership draw at his law firm. This draw provides the cash flow from which Mr. McCallion is able to lend his campaign money. He is paid in periodic amounts, which amounted to of $232,135.00 in 1999. His total compensation may exceed this amount during the year 2000. In addition, Mr. McCallion has other income from consulting and legal editing . Like most people, Mr. McCallion applies a portion of this income to meet his various obligations, including a mortgage, payments due under a separation agreement, college tuition and expenses relating to his two children. When Mr.McCallion's expenses in any given month are greater than his income, he can draw upon $50,000 in unsecured lines of credit that he maintains with MBNA America of Wilmington, Delaware. These credit lines have been available to Mr. McCallion on a longstanding basis, beginning in 1995 an are fully disclosed on his FDS. Mr. McCallion does not maintain a balance of more than $5,000 in any bank account.

Mr. McCallion has been able to arrange his own personal finances so that he has been able to loan the campaign committee money from his current cast flow. While his loans to date total $31,000, they have been made over a period of months from Mr. McCallion's personal income cash flow. There is nothing in the NRC's complaint to suggest otherwise and that should end the matter.

Thank you for your consideration of this matter.

Very truly yours,

Darrell L. Paster, Esq.
Treasurer
McCallion for Congress